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Miscellaneous—Labor Law—Payment of Wages

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case merely because of the procedural requirement for setting aside the fraudulent conveyance that the transferee be joined as a necessary party.²⁹

The only parties actually interested as a result of the litigation are plaintiff and the judgment-debtor defendant. The Retirement System is in a position similar to a stakeholder with nothing to lose or gain. If it retains the funds, it is obliged to return them eventually to the defendant. By losing the funds in this action it is merely relieved of that obligation.

Thus where the state or its agencies are merely joined as necessary parties with no actual or adverse interest in the litigation, the doctrine of sovereign immunity does not bar such suit.

Labor Law—Payment of Wages

In *People v. Vetri*³⁰ the defendant employer discontinued business and failed to make payments for accrued vacations, provided for in a collective bargaining agreement, to six of his employees. The Court held, reversing the Appellate Division,³¹ that these were not wages as contemplated by the Labor³² and Penal³³ laws which require the payment of weekly wages by an employer.

The Court felt that the law was not intended to include fringe benefits found in present day collective bargaining agreements, which were relatively foreign to per diem hirings at the time of the original enactment of the statute in 1890. Its purpose was to assure prompt payment of daily wages to those employees in a subordinate capacity, who depended upon their earnings for support on a per diem rather than on a salary basis.³⁴ It is also recognized that a violation of section 196 of the Labor Law is *malum prohibitum*, not *malum in se*, and as such the statute should be strictly construed.³⁵

By recent amendments³⁶ to section 71 of the Stock Corporation Law and section 22 of the Debtor and Creditor Law, the Legislature defined "wages" as

29. N. Y. DEBTOR AND CREDITOR LAW §278.

30. 309 N.Y. 401, 131 N.E. 2d 568 (1955).

31. 285 App. Div. 1089, 141 N.Y.S. 2d 505 (2d Dep't 1955).

32. N. Y. LABOR LAW §196(2) Every person carrying on a business by lease or otherwise . . . shall pay weekly to each employee, the wages earned to a day not more than six days prior to the date of such payment.

33. N. Y. PENAL LAW §1272 Each person . . . who does not pay the wages of all his . . . employees in accordance with the provisions of the labor law is . . . guilty of a misdemeanor.

34. *Erie R.R. v. Williams*, 199 N.Y. 108, 92 N.E. 404 (1910), *aff'd*, 233 U.S. 685 (1913).

35. *People v. Taylor*, 192 N.Y. 398, 85 N.E. 759 (1908).

36. N. Y. Sess. Laws, 1952, c. 794.

used therein to include vacation, holiday and severance pay. However, this definition of wages is expressly limited to the purposes of those two sections. This limitation, coupled with the failure to include a similar expanded definition for the word "wages" as used in the Labor Law, is significant; it shows that "wages", as used in the Labor Law, was not intended to include vacation pay. The law affords wage earners ample civil remedies for the purpose of assuring full payment of all additional benefits accruing to them under their contract of employment.

The dissent stressed the fact that the contemporary, natural and obvious meaning of the term "wages" includes vacation pay, and any employer of average intelligence would not assume it to have any other meaning. Penal statutes, without necessity of amendment, may, in view of changes in other statutory law, make criminal conduct which prior to these changes was not proscribed.³⁷ "The rule that a penal statute is to be strictly construed does not apply to this chapter or any of the provisions thereof, but all such provisions must be construed according to the fair import of their terms, to promote justice and effect the objects of the law."³⁸

The argument of the dissent would be more cogent if civil remedies were inadequate to achieve justice in this area. However, barring this, the majority decision seems to reach a more equitable result.

Pledge—Notice of Sale

The general maxims of equity impose upon a pledgee duties comparable to those existing in all trust relations. Of particular importance is the obligation to the pledgor, upon a sale, to make every effort to sell at the greatest possible advantage.³⁹ Implicit in this obligation is the requirement of a reasonable and customary notice, made in good faith by the pledgee.⁴⁰ It must be so designed as to adequately identify the property in question, disclosing the facts sufficiently to apprise the reading public of the true nature of the asset.⁴¹ The actual degree of disclosure required is a question which must be decided in the factual context of each case.

*In re Kiamie's Estate*⁴² concerned a sale of pledged collateral upon default in payment of a note. The collateral consisted of all the stock of four corporations,

37. *People v. Morton*, 308 N.Y. 96, 123 N.E. 2d 790 (1954).

38. N. Y. PENAL LAW §21.

39. *Cole v. Manufacturer's Trust Co.*, 164 Misc. 741, 299 N.Y. Supp. 418 (Sup. Ct. 1937).

40. *Small v. Housman*, 208 N.Y. 115, 101 N.E. 700 (1913).

41. PERRY, TRUSTS AND TRUSTEES, §782 (7th ed. 1929).

42. 309 N. Y. 325, 130 N.E. 2d 745 (1955).